

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff,

v.

EFREN T. IRIZARRY-COLON,  
ISMAEL L. ALFONZO-REYES,  
VANESSA MORALES-HERNANDEZ, and  
the conjugal partnership  
constituted by both,

Defendants.

CIVIL NO. 05-1607 (JAF)

**OPINION AND ORDER**

On June 7, 2005, the United States filed this action under the False Claims Act (FCA), 31 U.S.C. §3729 et seq., the Financial Institution Reform Recovery And Enforcement Act (FIRREA), 12 U.S.C. §1833a and 18 U.S.C. §1014, and common law, to recover damages and civil penalties from the defendants because of their false and fraudulent claims and/or false and fraudulent statements made in violation of federal and common law in support of or in relation to applications for emergency and operating loans and applications for indemnity under the Livestock Indemnity Program granted by the United States Department of Agriculture, Farm Service Agency, for alleged losses sustained as a result of Hurricane Georges. Summons were served upon co-defendants Alfonzo and Morales personally on July 13, 2005. On August 1, 2005, co-defendants Alfonzo and Morales

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1 requested an extension of time to file an answer, which was granted  
2 on August 30, 2005. On August 30, 2005, co-defendants Alfonzo and  
3 Morales requested a second extension of time to file an answer,  
4 which was also granted as the last extension, on September 2, 2005.  
5 On October 25, 2005, the United States requested the entry of  
6 default against co-defendants Alfonzo, Morales and the conjugal  
7 partnership constituted by both. On November 4, 2005, this court  
8 entered the default of co-defendants Alfonzo, Morales and the  
9 conjugal partnership constituted by both. More than eight months  
10 have elapsed from the Order of this court granting the last  
11 extension of time, and co-defendants Alfonzo, Morales and the  
12 conjugal partnership constituted by both have failed to plead or  
13 otherwise defend in this case. Under Rule 55 of the Federal Rules  
14 of Civil Procedure, Judgment by Default may be entered against any  
15 party who is in default.

16 This court has jurisdiction over this matter pursuant to 28  
17 U.S.C. §1345 and its general equitable jurisdiction. Venue is  
18 proper in this District under 28 U.S.C. §1391 and 31 U.S.C.  
19 §3732(a).

20 We have before us a Motion for Judgment by Default as to co-  
21 defendants Alfonzo, Morales and the conjugal partnership  
22 constituted by both filed by the United States of America. It  
23 appearing from the record on file in these proceedings that default  
24 was entered upon their failure to answer or otherwise plead in this

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1 case, and upon review of the allegations contained in the Complaint  
2 and in the Motion for Judgment by Default, which have been  
3 supported by uncontested documentary evidence, we find Plaintiff is  
4 entitled to Judgment by Default under Rule 55 (b) (2) of the Federal  
5 Rules of Civil Procedure, and we now enter our findings and  
6 conclusions.

7 **I.**

8 **The Facts**

9 The following facts have not been contested by co-defendants  
10 Alfonso, Morales and the conjugal partnership constituted by both.

11 On April 25, 2003, the Grand Jury returned a 22-count  
12 indictment in Criminal Case #03-124 (JAG) charging Fernando Toledo-  
13 Fernández, co-defendant Ismael L. Alfonso-Reyes, co-defendant  
14 Vanessa Morales-Hernández, José Torres-Correa, Gregorio Toledo-  
15 González, Gregorio Toledo-Fernández, Pedro Toledo-Fernández, and  
16 José Juan Toledo-Fernández with conspiracy to defraud the United  
17 States (18 U.S.C. Section 371), false statements in loan  
18 applications to the United States Department of Agriculture, Farm  
19 Service Agency (hereinafter referred to as "FSA") (18 U.S.C.  
20 Section 1014), false statements in application and/or certification  
21 to obtain monies from FSA Livestock Indemnity Program (18 U.S.C.  
22 Section 1014), bribery of public official (18 U.S.C. Section 201),  
23 and acts affecting a personal financial interest (18 U.S.C. Section  
24 208), all in connection with applications for emergency and

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1 operating loans granted by the United States Department of  
2 Agriculture, Farm Service Agency, for alleged losses sustained as a  
3 result of Hurricane Georges.

4 On April 2, 2004, the Grand Jury returned a 62-count  
5 superseding indictment in Criminal Case No. 03-124 (JAG),  
6 superseding the previous indictment referred to in the preceding  
7 paragraph, against the same named defendants, and charging them  
8 with conspiracy to defraud the United States (18 U.S.C. Section  
9 371), false statements in loan applications to the United States  
10 Department of Agriculture, FSA (18 U.S.C. Section 1014), false  
11 statements in application and/or certification to obtain monies  
12 from FSA Livestock Indemnity Program (18 U.S.C. Section 1014),  
13 bribery of public official (18 U.S.C. Section 201), and acts  
14 affecting a personal financial interest (18 U.S.C. Section 208),  
15 all in connection with applications for emergency and operating  
16 loans granted by the United States Department of Agriculture, Farm  
17 Service Agency, for alleged losses sustained as a result of  
18 Hurricane Georges.

19 At all times pertinent to that superseding indictment, co-  
20 defendant Ismael Luis Alfonzo-Reyes, hereinafter referred to as  
21 "Alfonzo," was employed by the United States Department of  
22 Agriculture, Farm Service Agency, as Farm Loan Manager assigned to  
23 the Ponce office until May 9, 1999, then transferred to the Arecibo  
24 Office.

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1           At all times pertinent to that superseding indictment co-  
2           defendant Vanessa Morales-Hernández, hereinafter referred to as  
3           “Morales,” was married to “Alfonzo,” and under contract with the  
4           Farm Service Agency, as a loan packager (person paid by FSA to help  
5           farmers put together an application for loans at FSA, free of  
6           charge to the borrower). During times pertinent to this complaint,  
7           “Morales” also worked independently of FSA, charging the borrowers  
8           a percentage of the loan for her services.

9           At all times pertinent to the superseding indictment, Fernando  
10          Toledo-Fernández, Gregorio Toledo-González, Gregorio Toledo-  
11          Fernández, Pedro Toledo-Fernández, and José Juan Toledo-Fernández  
12          were cattlemen in the Arecibo/Hatillo region of Puerto Rico and  
13          owned several farms and corporations dedicated to milk production  
14          and cattle raising. Fernando Toledo-Fernández and Gregorio Toledo-  
15          Fernández were the owners and in control of the affairs of Gregorio  
16          Toledo, Inc., dedicated to the business of cattle sales. Gregorio  
17          Toledo, Inc. (owned by Fernando Toledo-Fernández and Gregorio  
18          Toledo-Fernández,) was the owner of and in control of the affairs  
19          of Café Dairy, Inc., dedicated to the business of milk production.  
20          Gregorio Toledo-Fernández and Pedro Toledo-Fernández were the  
21          owners of and in control of the affairs of Toledo Dairy, Inc.,  
22          dedicated to the business of milk production. Gregorio Toledo-  
23          González was the owner of and in control of the affairs of Marina  
24          Dairy, Inc., dedicated to the business of milk production. Pedro

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1 Toledo-Fernández was the owner of and in control of the affairs of  
2 PTF, Inc., dedicated to the business of milk production. José Juan  
3 Toledo-Fernández was the owner of and in control of the affairs of  
4 J. Dairy, Inc., dedicated to the business of milk production.

5 At all times pertinent to the superseding indictment, José  
6 Torres-Correa, was the Farm Program Director of FSA in Puerto Rico.

7 At all times pertinent to the superseding indictment, Juan  
8 Isidoro Barreto-Barreto, Glorimar Barreto-Ginorio, Juan Félix  
9 Barreto-Ginorio, Juan Manuel Barreto-Ginorio, Ramón L. Barreto-  
10 Ginorio, Luis René Delgado-Pérez, Jorge Herrera-Mora (now  
11 deceased), Luis R. Martínez-Martínez, Edgardo Mercado-Rosa, Carlos  
12 H. Ortiz-Colón, Juan J. Peraza-Mora, Nelson Ramos-Irizarry, Carmelo  
13 Rivera-Rivera, José Zaragoza-Urdaz, Teodoro Alfonzo-Toledo, Jorge  
14 Delgado-Pérez, Ismael Delgado-Pérez, Ivan Rosa-Toledo, Luis M.  
15 Ruiz-Ruiz, and Pedro Vélez-Cabrera, were cattlemen in the Arecibo  
16 region of Puerto Rico.

17 In Count One of the superseding indictment, both Alfonzo and  
18 Morales were charged with conspiracy to defraud and commit offenses  
19 against the United States (18 U.S.C. Section 371) as follows:  
20 Beginning on or about September 26, 1998, and continuing up to and  
21 until in or about July 2000, in Arecibo, Hatillo, San Juan,  
22 Mayaguez, Camuy, Ponce, and Coamo, Puerto Rico, and other areas in  
23 the District of Puerto Rico and elsewhere within the jurisdiction  
24 of the court, the defendants therein (including Alfonzo and

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1 Morales), and José Torres-Correa, Edgardo Mercado-Rosa, Jorge  
2 Herrera-Mora (now deceased), Carlos H. Ortiz-Colón, Juan J. Peraza-  
3 Mora, Nelson Ramos-Irizarry, Carmelo Rivera-Rivera, Juan Isidoro  
4 Barreto-Barreto, Glorimar Barreto-Ginorio, Juan Félix Barreto-  
5 Ginorio, Juan Manuel Barreto-Ginorio, Ramon Barreto-Ginorio, Luis  
6 René Delgado-Pérez, Luis Martínez-Martínez, Jorge Delgado-Pérez,  
7 José Zaragoza-Urdaz, and others known and unknown to the grand  
8 jury, did knowingly and willfully conspire, confederate and agree  
9 together and with each other to: (1) defraud the Farm Service  
10 Agency, an agency of the United States, in excess of \$10 Million,  
11 in the process of evaluating, approving, and disbursing emergency  
12 and operating loans and providing awards and incentives available  
13 to farmers that qualified and who were in need because of damages  
14 suffered as a consequence of the passing of Hurricane Georges  
15 through the island of Puerto Rico on or about September 21, 1998;  
16 and/or (2) make false statements or reports, or overvalue land,  
17 property or security for the purpose of influencing the actions of  
18 the Secretary of Agriculture, acting through the Farm Service  
19 Agency, in connection with applications for emergency and operating  
20 loans, and incentive programs.

21 On September 24, 1998, the President of the United States  
22 declared that a major disaster existed in the Commonwealth of  
23 Puerto Rico. This declaration was based on the damages resulting  
24 from Hurricane Georges, which occurred on September 21, 1998.

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1           This disaster declaration resulted in the availability of  
2           emergency loans at low-interest rates, as well as free monetary  
3           awards for fence damages and cattle losses, all provided by the  
4           federal Farm Service Agency ("FSA"). FSA also provided operating  
5           loans at low-interest rates, the number of which was substantially  
6           increased due to claims asserted following the hurricane. The  
7           maximum an individual or related entity can receive from an  
8           emergency loan is \$500,000; and from an operating loan, \$200,000.

9           In the Superseding Indictment the overt acts committed by the  
10          members of the conspiracy were described as follows. On or about  
11          October 13, 1998, at El Buen Café Restaurant in Hatillo, Puerto  
12          Rico, Fernando Toledo-Fernández, co-defendant Alfonzo, and José  
13          Torres-Correa met and discussed the process of applying, processing  
14          and obtaining emergency and operating loans from FSA for Fernando  
15          Toledo-Fernández and his family corporations, as well as for other  
16          cattlemen from the Arecibo region.

17          On or about October 13, 1998, Alfonzo, offered a kickback of  
18          approximately \$130,000 to José Torres-Correa, for expediting,  
19          approving, and disbursing emergency and operating loans from FSA to  
20          approximately twelve to fifteen cattlemen from the Arecibo region.

21          On or about the same date referred to in the above-mentioned  
22          paragraph, Alfonzo agreed that his wife, Morales, would be  
23          recruited to serve as a loan packager to prepare the loan  
24          applications for a group of cattlemen from the Arecibo region.



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1           On or about the same date as referred to in the above-  
2           mentioned paragraph, Alfonzo agreed to charge a 4% commission to  
3           the cattlemen from the total amount of the loans proceeds  
4           disbursed, to be divided between himself (Alfonzo) and his wife,  
5           Morales, José Torres-Correa, and an unnamed person.

6           On or about the same date as referred to in the above-  
7           mentioned paragraph, it was agreed by Fernando Toledo-Fernández, an  
8           unnamed person, and co-defendant Alfonzo that Fernando Toledo-  
9           Fernández would be in charge of recruiting cattlemen to seek  
10          emergency and operating loans from FSA.

11          In or about October 1998, Fernando Toledo-Fernández invited  
12          family members and other cattlemen from the Arecibo region to his  
13          home, in order to offer the services of an attorney for the purpose  
14          of preparing and expediting applications, and the disbursement of  
15          emergency and operating loans to be obtained from FSA. On the same  
16          date as referred to in the above-mentioned paragraph, co-defendant  
17          Alfonzo went to the residence of Fernando Toledo-Fernández, spoke  
18          to the group of cattlemen, and explained the emergency and  
19          operating loans available from FSA. At that meeting, co-defendant  
20          Alfonzo introduced his wife, co-defendant Morales, as an FSA-  
21          authorized loan packager that would be working with the attorney  
22          that Fernando Toledo-Fernández introduced to the group.

23          From in or about September 1998 to January 2000, Morales  
24          assisted Fernando Toledo-Fernández, Gregorio Toledo-González,

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1 Gregorio Toledo-Fernández, Pedro Toledo-Fernández, José Juan  
2 Toledo-Fernández, Juan Isidoro Barreto-Barreto, Glorimar Barreto-  
3 Ginorio, Juan Félix Barreto-Ginorio, Juan Manuel Barreto-Ginorio,  
4 Ramón L. Barreto-Ginorio, Luis René Delgado-Pérez, Luis R.  
5 Martínez-Martínez, Edgardo Mercado-Rosa, Carlos H. Ortiz-Colón,  
6 Juan J. Peraza-Mora, Nelson Ramos-Irizarry, Carmelo Rivera-Rivera,  
7 José Zaragoza-Urdaz and others, in submitting false information in  
8 their loan application documents to FSA, in order to obtain  
9 emergency and/or operating loans.

10 The false information submitted to Farm Service Agency to  
11 support the loan applications consisted in false Certification of  
12 Losses, which contained false and or inflated information as to the  
13 physical losses of dairy cattle and damages to farm fences on  
14 account of Hurricane Georges, other false documents, letters and  
15 certifications to support these losses, and Requests for Lender  
16 Verification of Loan Application from several commercial financial  
17 institutions which contained false information to support their  
18 loan application(s) with FSA.

19 From in or about October 1998 to January 2000, co-defendant  
20 Alfonzo, while being the Farm Loan Manager for the Ponce field  
21 office of FSA, and after his transfer to the Arecibo field office  
22 of FSA, personally worked on the loan application documents of  
23 cattlemen that his wife, co-defendant Morales, had prepared as loan  
24 packager.

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1           Between October 1998 and February 2000, co-defendants Alfonzo  
2           and Morales knowingly presented, or caused to be presented, false  
3           or fraudulent loan applications, running records, forms, documents,  
4           vouchers, invoices, records, certification of losses, loan  
5           verifications, financial statements, and other documents,  
6           statements, and/or records that were used to submit, process,  
7           authorize, approve, grant, and/or pay Farm Service Agency emergency  
8           and operating loans in excess of \$10 Million to Fernando Toledo-  
9           Fernández, Gregorio Toledo-Fernández, José Juan Toledo-Fernández,  
10          Pedro Toledo-Fernández, Gregorio Toledo González, Edgardo Mercado-  
11          Rosa, Carlos H. Ortiz-Colón, Juan J. Peraza-Mora, Nelson Ramos-  
12          Irizarry, Carmelo Rivera-Rivera, Juan Isidoro Barreto-Barreto,  
13          Glorimar Barreto-Ginorio, Juan Félix Barreto-Ginorio, Juan Manuel  
14          Barreto-Ginorio, Ramón Barreto-Ginorio, Luis René Delgado-Pérez,  
15          Luis Martínez-Martínez, and José Zaragoza-Urdaz, and other dairy  
16          farmers in the Arecibo area.

17          With respect to the false information presented or caused to  
18          be presented to FSA in support of the loan applications, Alfonzo  
19          and Morales had either actual knowledge of the said false  
20          information, and/or acted in deliberate ignorance of the truth or  
21          falsity of said information, and/or acted in reckless disregard of  
22          the truth or falsity of said information.

23          In or about March 1999, José Torres-Correa suggested to the  
24          State Executive Director of FSA in Puerto Rico that he transfer co-

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1 defendant Alfonzo from the FSA field office in Ponce to the FSA  
2 field office in Arecibo.

3 Sometime after May 9, 1999, but prior to September 24, 1999,  
4 co-defendant Alfonzo, as Farm Loan Manager and County Supervisor of  
5 the Arecibo office of FSA, requested from José Torres-Correa that  
6 he approve and authorize for disbursement the loan applications of  
7 Fernando Toledo-Fernández, Gregorio Toledo-González, Gregorio  
8 Toledo-Fernández, Pedro Toledo-Fernández, José Juan Toledo-  
9 Fernández, Juan Isidoro Barreto-Barreto, Glorimar Barreto-Ginorio,  
10 Juan Félix Barreto-Ginorio, Juan Manuel Barreto-Ginorio, Ramón L.  
11 Barreto-Ginorio, Luis René Delgado-Pérez, Luis R. Martínez-  
12 Martínez, Edgardo Mercado-Rosa, Carlos H. Ortiz-Colón, Juan J.  
13 Peraza-Mora, Nelson Ramos-Irizarry, Carmelo Rivera-Rivera, José  
14 Zaragoza-Urdaz, and other cattlemen in the Arecibo region.

15 On June 9, 1999, Alfonzo, as FSA Loan Manager in Arecibo,  
16 falsely certified that the losses and damages claimed by various  
17 dairy farmers on their emergency loan application documents were  
18 reasonable and of sufficient magnitude to qualify them for an  
19 emergency loan.

20 On June 9, 1999, José Torres-Correa, as Farms Program Director  
21 of FSA in Puerto Rico, approved and authorized the disbursement of  
22 disaster-related loans to Fernando Toledo-Fernández, Gregorio  
23 Toledo-González, Gregorio Toledo-Fernández, Pedro Toledo-Fernández,  
24 José Juan Toledo-Fernández, Edgardo Mercado-Rosa, Carlos H. Ortiz-

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1 Colon, Juan J. Peraza-Mora, Juan Isidoro Barreto-Barreto, Glorimar  
2 Barreto-Ginorio, Juan Félix Barreto-Ginorio, Juan Manuel Barreto-  
3 Ginorio, Nelson Ramos-Irizarry, Carmelo Rivera-Rivera, Luis René  
4 Delgado-Pérez, and José Zaragoza-Urdaz, which loan documents  
5 contained false information.

6 Between November 2003 and March 2005, José Torres-Correa,  
7 Gregorio Toledo-González, Gregorio Toledo-Fernández, Pedro Toledo-  
8 Fernández, Edgardo Mercado-Rosa, Carlos H. Ortiz-Colón, Juan J.  
9 Peraza-Mora, Ramón Barreto-Ginorio, Juan Isidoro Barreto-Barreto,  
10 Glorimar Barreto-Ginorio, Juan Félix Barreto-Ginorio, Juan Manuel  
11 Barreto-Ginorio, Nelson Ramos-Irizarry, Carmelo Rivera-Rivera, Luis  
12 René Delgado-Pérez, and José Zaragoza-Urdaz, all plead guilty to a  
13 count of loan fraud (18 USC §1014), for knowingly making false  
14 statements or reports to obtain the FSA loans subject of this case.

15 On March 18, 2005, Fernando Toledo-Fernández plead guilty to a  
16 count of conspiracy and a count of loan fraud (18 USC §1014) for  
17 knowingly making false statements or reports to obtain the FSA  
18 loans subject of this complaint.

19 From on or about July 1999 to February 2000, FSA disbursed to  
20 Fernando Toledo-Fernández, Gregorio Toledo-González, Gregorio  
21 Toledo-Fernández, Pedro Toledo-Fernández, José Juan Toledo-  
22 Fernández, Edgardo Mercado-Rosa, Carlos H. Ortiz-Colón, Juan J.  
23 Peraza-Mora, Juan Isidoro Barreto-Barreto, Glorimar Barreto-  
24 Ginorio, Juan Félix Barreto-Ginorio, Juan Manuel Barreto-Ginorio,

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1 Nelson Ramos-Irizarry, Carmelo Rivera-Rivera, Luis René Delgado-  
2 Pérez, Ramón Barreto-Ginorio, Luis Martínez-Martínez, and José  
3 Zaragoza-Urdaz, a total of \$8,231,530 in Emergency Loan Funds and  
4 \$2,200,000 in Operating Loan funds.

5 A reading of the Superseding Indictment, copy of which was  
6 submitted as part of the Memorandum in Support of the Motion for  
7 Judgment by Default, shows that Alfonzo and Morales submitted or  
8 caused to be submitted to the Farm Service Agency at least one-  
9 hundred eighteen false claims or statements in relation to or in  
10 support of the emergency and operation loans disbursed by said  
11 agency. In addition, Alfonzo was charged and found guilty on Eight  
12 Counts (Counts Forty-Four through Fifty-One) of false statements on  
13 application and/or certification to obtain monies from the Farm  
14 Service Agency Livestock Indemnity Program (18 U.S.C. § 1014).  
15 This adds at least Eight more false claims or statements attributed  
16 to Alfonzo in relation to FSA Livestock Indemnity Program.

17 From in or about July 1999 to February 2000, co-defendant  
18 Morales was paid \$202,322.82 for her participation in preparing  
19 emergency and operating loan applications packages with false  
20 information for Fernando Toledo-Fernández, Gregorio Toledo-  
21 González, Gregorio Toledo-Fernández, Pedro Toledo-Fernández, José  
22 Juan Toledo-Fernández, Juan Isidoro Barreto-Barreto, Glorimar  
23 Barreto-Ginorio, Juan Félix Barreto-Ginorio, Juan Manuel Barreto-  
24 Ginorio, Ramón L. Barreto-Ginorio, Luis René Delgado-Pérez, Luis R.

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1       Martínez-Martínez, Edgardo Mercado-Rosa, Carlos H. Ortiz-Colón,  
2       Juan J. Peraza-Mora, Nelson Ramos-Irizarry, Carmelo Rivera-Rivera,  
3       José Zaragoza-Urdaz, and other farmers.

4             From in or about August 1999 to March 2000, co-defendants  
5       Alfonzo and Morales paid approximately \$18,000 in cash to José  
6       Torres-Correa, for his role in expediting, approving, and  
7       authorizing disbursements of various emergency and operating loans  
8       to several cattlemen in the Arecibo region of Puerto Rico.

9             At different times during the existence of this conspiracy,  
10       co-defendant Alfonzo assured José Torres-Correa that he did not  
11       have to pay a \$50,000 debt he had with co-defendant Alfonzo, in  
12       exchange for his role in expediting, approving, and authorizing  
13       disbursements of various emergency and operating loans to several  
14       cattlemen in the Arecibo region of Puerto Rico.

15            With respect to the false and fraudulent information presented  
16       or caused to be presented to FSA related to the loan closings, and  
17       the payment of kickbacks to José Torres-Correa, co-defendants  
18       Alfonzo and Morales had either actual knowledge of the said false  
19       information and kickbacks, and/or acted in deliberate ignorance of  
20       the truth or falsity of said information and kickbacks, and/or  
21       acted in reckless disregard of the truth or falsity of said  
22       information and kickbacks.

23            On or about September 1, 1999, through on or about January 10,  
24       2000, the Farm Service Agency disbursed to Fernando Toledo-

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1       Fernández, Gregorio Toledo-Fernández, José Juan Toledo-Fernández,  
2       Pedro Toledo-Fernández, Gregorio Toledo González, Edgardo Mercado-  
3       Rosa, Carlos H. Ortiz-Colón, Juan J. Peraza-Mora, Nelson Ramos-  
4       Irizarry, Juan Isidoro Barreto-Barreto, Glorimar Barreto-Ginorio,  
5       Juan Félix Barreto-Ginorio, Juan Manuel Barreto-Ginorio, Ramón  
6       Barreto-Ginorio, Luis René Delgado-Pérez, Jorge Delgado-Pérez, and  
7       José Zaragoza-Urdaz, Teodoro Alfonso-Toledo, Ismael Delgado-Pérez,  
8       Iván Rosa Toledo, Luis M. Ruiz-Ruiz, Pedro Vélez-Cabrera, and other  
9       dairy farmers in the Arecibo area a total of \$364,784 in free  
10       livestock indemnity monies under the FSA Livestock Indemnity  
11       Program. Co-defendant Alfonzo was charged and found guilty of  
12       knowingly presenting, or causing to be presented, false or  
13       fraudulent applications, records, forms, documents, vouchers,  
14       invoices, certification of losses, and other documents, statements,  
15       and/or records that were used to submit, process, authorize,  
16       approve, grant, and/or pay Farm Service Agency free livestock  
17       indemnity monies under the FSA Livestock Indemnity Program in Eight  
18       Counts.

19       The false statements consisted in that these dairy farmers,  
20       with the knowledge, assistance and/or advice of co-defendant  
21       Alfonzo, claimed that they had lost certain number of cows and  
22       heifers as a consequence of Hurricane Georges when they well knew  
23       that this information was false.



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In addition to the fact that co-defendants Alfonzo, Morales and the conjugal partnership constituted by both, have failed to contest any of the aforementioned facts, on December 22, 2004, after a six-month trial, a jury found both co-defendants Alfonzo and Morales guilty on Count One of the Superseding Indictment (Conspiracy to Defraud and Commit Offenses Against the United States, 18 U.S.C. Section 371), and on Counts Two through Thirteen (False statements in loan applications, 18 U.S.C. Section 1014), on Count Twenty (Bribery of Public Official, 18 U.S.C. Section 201), on count Twenty-Two through Forty-Six (Acts Affecting a Personal Financial Interest, 18 U.S.C. Section 208).<sup>1</sup> In addition, Alfonzo was found guilty on Counts Forty-Four through Fifty-One (False statements on application and/or certification to obtain monies from the Farm Service Agency Livestock Indemnity Program, 18 U.S.C. Section 1014), all in relation to the FSA loans and programs subject of the complaint in the case at bar. Alfonzo and Morales were sentenced by this court on February 17 and 13, 2006, respectively.

## II.

## The False Claims Act

Plaintiff contends that Judgment by Default should be entered in its favor under the False Claims Act (31 U.S.C. §3729 et seq.).

<sup>1</sup>Except that Morales was **not found guilty** as to counts 22, 41, and 43 through 46.

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1 The False Claims Act establishes seven acts, each of which  
2 constitutes a basis for liability. 31 U.S.C. §3729(a). The most  
3 common provisions impose liability on any person who:

4 (1) knowingly presents, or causes to be  
5 presented to an officer or employee of the  
6 United States Government or a member of the  
7 Armed Forces of the United States a false or  
8 fraudulent claim for payment or approval;

9 (2) knowingly makes, uses, or causes to be made  
10 or used, a false record or statement to get a  
11 false or fraudulent claim paid or approved by  
12 the Government;

13 (3) conspires to defraud the Government by  
14 getting a false or fraudulent claim allowed or  
15 paid;

16 (4) knowingly makes, uses, or causes to be made  
17 or used, a false record or statement to  
18 conceal, avoid, or decrease an obligation to  
19 pay or transmit money or property to the  
20 Government.

21 31 U.S.C. §3729(a)

22 In addition, the False Claims Act, 31 U.S.C. §3729(b),  
23 provides that:

24 For the purpose of this section, the term  
25 "knowing" and "knowingly" means that a person,  
26 with respect to information

27 (1) had actual knowledge of the information;

28 (2) acts in deliberate ignorance of the truth  
29 or falsity of the information; or

30 (3) acts in reckless disregard of the truth or  
31 falsity of the information,

32 **and no proof of specific intent to defraud is**  
33 **required.** (Emphasis added)

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1           The case law construing 31 U.S.C. §3729(b) affirms the clear  
2           language of the statute and the intentions of Congress that "no  
3           proof of specific intent to defraud is required". U.S. v. Cabrera-  
4           Diaz, 106 F. Supp. 2d 234, 239 (D.P.R. 2000). Notwithstanding the  
5           above, in the case at bar, the United States has exceeded the  
6           requirement of the False Claims Act regarding intent or knowledge.  
7           Here, both Alfonzo and Morales have acted with criminal intent to  
8           defraud the United States and to file false claims/statements, as  
9           it appears from their conviction in criminal case 03-124 (JAG),  
10          and, therefore, the government has established intent or knowledge  
11          beyond the requirements of the False Claims Act.

12          As stated in U.S. v. Cabrera-Diaz, supra, the False Claims Act  
13          provides that any person who violates its provisions is liable to  
14          the United States for "a civil penalty of not less than \$5,000 and  
15          not more than \$10,000, plus 3 times the amount of damages which the  
16          Government sustains because of the act of that person." 31 U.S.C.  
17          §3729(a). Persons violating the Act are also liable for the cost of  
18          litigation. Id.

19          **A. Damages**

20          There is no set formula for measuring damages under the False  
21          Claims Act. Damages have been measured in a variety of ways and the  
22          measure applied by the courts in specific cases has been greatly  
23          influenced by the nature of the fraud and the type of Government  
24          transaction affected by it.

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1           "The measure of the government's damages [is] the amount that  
2       it paid out by reason of the false statements over and above what  
3       it would have paid if the claims had been truthful." United States  
4       v. Woodbury, 359 F.2d 370, 379 (9th Cir. 1966); accord TDC, 288  
5       F.3d at 428 ("measure of damages [is] based on what the government  
6       would have paid out had it known of the information that  
7       [defendant] omitted"); United States v. Cabrera-Diaz, 106 F.Supp.2d  
8       234 (D.P.R. 2000) (damages are "the amount the Government would not  
9       have paid had it known the true facts"); United States ex rel. Roby  
10       v. Boeing Co., 79 F. Supp. 877 (S.D. Ohio 1999) ("A court should  
11       ask the question, 'How much would the government have paid for the  
12       item at issue 'but for' the fraudulent actions of the  
13       defendant?'"); BMV Combat Systems v. United States, 44 Fed. Cl.  
14       141, 147 (Ct. Cl. 1999) ("[T]he measure of the government's damages  
15       would be the amount that it paid out by reason of the false  
16       [claims] over and above what it would have paid if the claims had  
17       been truthful") (quoting Woodbury, 359 F.2d at 379).

18           This rule of damages was confirmed by the Supreme Court nearly  
19       sixty years ago in U.S. ex rel. Marcus v. Hess, 317 U.S. 537  
20       (1943), which involved collusive bidding on a government contract.  
21       The trial court held that the measure of damages was "the money  
22       which the Government contributed to each project in excess of what  
23       it would have paid, had there been fair and open competition." 41  
24       F. Supp. 197, 214 (W.D. Pa. 1941). The Supreme Court affirmed the

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1 district court's ruling, observing that the "chief purpose of the  
2 [FCA] was to provide for restitution to the government of money  
3 taken from it by fraud." 317 U.S. at 551.

4 In TDC, the D.C. Circuit relied upon the Supreme Court's  
5 decision in Hess to reject an argument similar to that advanced by  
6 Defendants here. The TDC defendants had been hired by the  
7 government to develop a minority bonding program. The government  
8 brought a FCA action against the defendants after discovering that  
9 they had failed to comply with the program's conflict of interest  
10 rules. In the trial court, the defendants argued that the  
11 government suffered no damages despite their conflict of interest  
12 because the government got the program it paid for. In rejecting  
13 that argument, the trial court held that the proper question in  
14 determining damages is: "How much would the government have paid  
15 for the item at issue 'but for' the fraudulent actions of the  
16 defendant?" United States v. TDC Management Corp. et al., CA  
17 No. 89-1533, at 11 (Feb. 6, 2001) (quoting Roby, 79 F. Supp.2d at  
18 877) (appended as Attachment A). The trial court concluded: "Had  
19 the Government been aware of the program deviations, it would not  
20 have continued to expend funds on the minority bonding program.  
21 Therefore, [defendant] is liable for damages on all submitted  
22 vouchers starting with the first fraudulent voucher . . . ." Id.  
23 at 12. The D.C. Circuit affirmed the trial court's decision,  
24 concluding that it was consistent with the standard in Hess and

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1       that it "properly applied a 'but for' measure of damages based on  
2       what the government would have paid out had it known of the  
3       information that [defendant] omitted." TDC, 288 F.3d at 428.

4       A similar damage rule was applied by the court in United  
5       States v. Globe Remodeling Co., 196 F. Supp. 652 (D. VT 1961),  
6       which involved a factual situation similar to the instant matter.  
7       In that case, the defendants were found liable for having  
8       fraudulently induced the Federal Housing Administration ("FHA") to  
9       insure a home improvement loan. When the borrowers defaulted, the  
10      FHA was required to pay the lending institution. Subsequently, the  
11      borrowers fully repaid the government. Nevertheless, the court  
12      held that the government's damages were the full amount of the  
13      "original loss" to the government occasioned by its payment to the  
14      lending institution. Id. at 657. The court gave defendants credit  
15      for the repaid amounts, but only after doubling<sup>2</sup> the government's  
16      initial damages.

17      In Young Montenay v. United States, 15 F.3d 1040 (Fed Cir.  
18      1994), the defendant falsely claimed progress payments for \$49,000  
19      in expenses it had not yet incurred. Because the work was  
20      subsequently performed, the defendant argued at trial that the  
21      government's damages were limited to lost interest on the early  
22      payments. The trial court disagreed and held that the government's

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<sup>2</sup>Under the pre-1986 version of the FCA, the government was entitled to double, rather than treble, damages.

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1 damages were the full \$49,000. On appeal, the Federal Circuit  
2 affirmed. Looking to the amount of money the government paid out  
3 at the time the fraudulent conduct occurred, the court concluded  
4 that the government "was denied the use of" the full amount of the  
5 false progress payments. Id. at 1043 & n.3.

6 As these cases make clear, the touchstone of FCA damages is  
7 the pay-out of government funds as a result of the defendant's  
8 fraud. Once funds are fraudulently procured from the treasury and  
9 are no longer available for use by the government, the United  
10 States has suffered a loss that gives rise to damages under the  
11 FCA. Such a rule recognizes the opportunity cost to the government  
12 due to the unavailability of these funds. This rule is also  
13 consonant with the FCA's "chief purpose of provid[ing] for  
14 restitution to the government of money taken from it by fraud."  
15 Hess, 317 U.S. at 551. It ensures that the government will be  
16 fully compensated for any fraud on the public fisc, and avoids  
17 subjecting the government's right of recovery to the unknown risks  
18 of future events. For this reason, the courts have correctly held  
19 that the government is entitled to damages under the FCA whenever  
20 it pays out money it would not have paid but for the defendant's  
21 fraud - regardless of any other recourse the government might  
22 possess to recoup the lost funds.

23 Here, it is undisputed that Alfonzo's and Morales' fraud  
24 caused the FSA to pay out at least \$10 Million in emergency and

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1 operating loans and Livestock Indemnity Program funds it would not  
2 otherwise have disbursed. Accordingly, Alfonzo's and Morales'  
3 fraud caused the FSA to disburse at least \$10 Million it would not  
4 otherwise have paid out. These payments constitute damages subject  
5 to the FCA's trebling provisions.

6 A logical and necessary corollary to the rule that FCA damages  
7 arise whenever the government is fraudulently induced to pay out  
8 money from the treasury, is the principle that any subsequent  
9 recoupment of those payments does not negate the government's claim  
10 for damages. This latter principle was expressly confirmed by the  
11 Supreme Court's seminal decision in United States v. Bornstein, 423  
12 U.S. 303 (1976), where the Supreme Court held that a recoupment  
13 entitles the defendant to an offset once the government's damages  
14 are multiplied, but does not reduce the amount of the government's  
15 initial loss.

16 In Bornstein, a subcontractor was found liable for causing the  
17 prime contractor to submit false claims to the United States for  
18 397 radio kits that did not meet government specifications.  
19 Subsequent to the submission of the false claims, the government  
20 recouped from the prime contractor the cost of replacing most of  
21 the faulty radio kits. Both the trial court and the appellate  
22 court concluded that the government's damages should be reduced by  
23 the amount recouped from the prime contractor. The Supreme Court  
24 reversed. The Court held that, "in computing the double damages



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1 authorized by the Act, the Government's actual damages are to be  
2 doubled before any subtractions are made for compensatory payments  
3 previously received by the Government from any source." 423 U.S.  
4 at 316.

5 As Bornstein itself recognized, its rule on recoupment serves  
6 several beneficial purposes. First, the rule preserves the FCA's  
7 treble damages provision both as a deterrent against fraud and a  
8 vehicle for ensuring full restitution of the government's loss. If  
9 a defendant can "avoid the Act's [treble]-damage provision by  
10 tendering the amount of the [untrebled] damages at any time prior  
11 to judgment . . . this possibility would make the [treble] damage  
12 provision meaningless." 423 U.S. at 316.

13 Second, multiplying damages before applying any offset is  
14 "consistent with the congressional judgment that [multiple] damages  
15 are necessary to compensate the Government completely for the  
16 costs, delays, and inconveniences occasioned by fraudulent claims."  
17 Id. at 530-31.

18 Third, the rule "fixes the liability of the defrauder without  
19 reference to the adventitious actions of other persons." Thus, it  
20 ensures that "two [defendants] who committed similar acts and  
21 caused similar damage" will not be "subject to widely disparate  
22 penalties depending on whether and to what extent [a third party]  
23 ha[s] paid the Government." Id.

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1           Finally, Bornstein's holding promotes mitigation of damages.  
2           The United States would have little incentive to pursue collection  
3           efforts if those efforts would nullify its right to claim treble  
4           (or any) damages.

5           In light of these considerations, any recoupment is to be  
6           credited only after the government's damages are multiplied.<sup>3</sup>  
7           Significantly, nothing in these cases holds or suggests that  
8           Bornstein's recoupment rule turns on the nature or source of the  
9           particular recoupment. Indeed, Bornstein itself forecloses such an  
10          interpretation. Bornstein twice emphasized that its holding  
11          applies to subsequent payments received from the government "from  
12          any source." 423 U.S. at 316; see also Hill, 676 F. Supp. at 1182  
13          ("The Government is entitled to damages . . . equal to triple the  
14          losses it actually incurred, reduced by payments received from any  
15          other source.").

16          In short, the government incurred damages when Alfonzo and  
17          Morales fraudulently induced the FSA to disburse \$10 Million in  
18          fraudulent loans and (Alfonzo) \$364,784 in Livestock Indemnity  
19          Program, which funds the government "was denied the use of" until

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<sup>3</sup>See United States v. Ekelman & Associates, Inc., 532 F.2d 545, 549 (6th Cir. 1976); Cabrera-Diaz, 106 F.Supp.2d at 241; United States v. Entin, 750 F. Supp. 512, 519 (S.D. Fla. 1990) ; United States v. Hill, 676 F. Supp. 1158, 1182 (N.D. Fla. 1987); United States v. Heck, 1987 WL 49253 at \* 6 (D.N.J. 1987); United States v. Canada, 425 F. Supp. 91, 92 (S.D. Ind. 1977); BMV, 44 Fed. Cl. at 150; Globe, 196 F. Supp. at 657.

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1 they were later partially repaid. Under Bornstein, belated  
2 repayment of these monies may entitle Alfonzo and Morales to a  
3 credit, but only after the government's damages are trebled. This  
4 repayment does not entitle Alfonzo and Morales to turn back the  
5 clock and pretend that their fraudulent scheme - and the resulting  
6 \$10 Million disbursement by the FSA - never occurred.

7 **B. Civil Penalties**

8 The False Claims Act provides that a person who commits any of  
9 the acts specified in 31 U.S.C. §3729 (a) (1) - (7) is liable for a  
10 "civil penalty of not less than \$5,000 and not more than \$10,000".

11 The report of the Senate Judiciary Committee summarizes the  
12 law with respect to civil penalties as follows:

13 The imposition of this forfeiture is **automatic**  
14 **and mandatory** for each claim which is found to  
15 be false. The United States is entitled to  
16 recover such forfeiture solely upon proof that  
17 false claims were made, without proof of any  
18 damages. Fleming v. United States, 336 F.2d  
19 475, 480 (10th Cir. 1964), cert. denied, 380  
20 U.S. 907 (1965). A forfeiture may be recovered  
21 from one who submits a false claim though no  
22 payments were made on the claim. United States  
23 v American Precision Products Corp., 115 F.  
24 Supp. 823 (D.N.J. 1953)

25 Each separate bill, voucher or other "false  
26 payment demand" constitutes a separate claim  
27 for which a forfeiture shall be imposed, see  
28 for example, United States v. Bornstein, 423  
29 U.S. 303 (1976), United States v. Collyer  
30 Insulated Wire Co., 94 F. Supp. 493 (D.R.I.  
31 1950), and this is true although many such  
32 claims may be submitted to the Government at  
33 one time. For example, a doctor who completes  
34 separate Medicare claim for each patient

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1           treated will be liable for a forfeiture for  
2           each such form that contains false entries even  
3           though several such forms may be submitted to  
4           the fiscal intermediary at one time.

5           S. Rep. No 345, 99<sup>th</sup> Cong., 2d Sess. 8-10 (1986), reprinted in 1986  
6           U.S.C.C.A.N. 5266, 5273-75.

7           As stated by Congress, the "United States is entitled to  
8           recover [civil penalties] solely upon proof that false claims were  
9           made, without proof of any damages." S. Rep. No. 345, 99th Cong.,  
10          2d Sess. 8 (1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5273. The  
11          primary cases concerning the issue are United States ex rel. Marcus  
12          v. Hess, 317 U.S. 537 (1943); Rex Trailer Co. v. United States, 350  
13          U.S. 148 (1956); and United States v. Rohleder, 157 F.2d 126 (3rd  
14          Cir. 1946). See also In re Schemmels, 85 F.3d 416 (91:h Cir. 1996)

15          The legislative history of the 1986 amendments makes clear  
16          that civil penalties are "automatic and mandatory for each claim  
17          which is false." S. Rep. No. 345, 99th Cong., 2d Sess. 8 (1986),  
18          reprinted in 1986 U.S.C.C.A.N. 5266, 5273. Thus, up to a certain  
19          point, the number of civil penalties, or whether to even assess  
20          civil penalties, is not discretionary. "This forfeiture provision  
21          is mandatory; it leaves the trial court without discretion to alter  
22          the statutory amount." United States v. Hughes, 585 F.2d 284, 286  
23          (7th Cir. 1978). The point at which a court may gain some  
24          discretion and limit the number of penalties is when the penalties

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1 are deemed "excessive". See United States v. Halper, 490 U.S. 435  
2 (1989).

3 A reading of the Superseding Indictment shows that Alfonzo and  
4 Morales submitted or caused to be submitted to the Farm Service  
5 Agency at least one-hundred eighteen false claims or statements in  
6 relation to or in support of the emergency and operation loans  
7 disbursed by said agency. A jury adjudicated that both Alfonzo and  
8 Morales had incurred in such false statements and claims as they  
9 found them guilty on Count One of the Superseding Indictment  
10 (Conspiracy to Defraud and Commit Offenses Against the United  
11 States, 18 U.S.C. Section 371), and on Counts Two through Thirteen  
12 (False statements in loan applications, 18 U.S.C. Section 1014).  
13 Therefore, Alfonzo and Morales are exposed to a mandatory civil  
14 penalty between \$590,000 to \$1,180,000 under 31 U.S.C. § 3729(a)(1)  
15 -(7) . Alfonzo is exposed to an additional mandatory civil penalty  
16 between \$40,000 to \$80,000 on account of at least eight more false  
17 claims or statements in relation to FSA Livestock Indemnity Program  
18 Alfonzo was charged and found guilty on Eight Counts (Counts Forty  
19 Four through Fifty One) of false statements on application and/or  
20 certification to obtain monies from the Farm Service Agency  
21 Livestock Indemnity Program (18 U.S.C. Section 1014).

22 **C. Costs**

23 In addition to treble damages and civil penalties, "[a] person  
24 violating this subsection shall also be liable to the United States

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1 Government for the costs of a civil action brought to recover any  
2 such penalty or damages". 31 U.S.C. §3729(a). See also BMY-Combat  
3 Systems Division of Harsco Corporation v. United States, 44 Fed.Cl.  
4 141 (Fed. Cl. 1999).

5 **D. Statute of Limitations**

6 The False Claims Act contains the following limitations  
7 period:

8 (b) A civil action under 3730 may not be  
9 brought

10 (1) more than 6 years after the date on which  
11 the violations of section 3726 is committed, or

12 (2) more than 3 years after the date when facts  
13 material to the right of action are known or  
14 reasonably should have been known by the  
15 official of the United States charged with  
16 responsibility to act in the circumstances, but  
17 in no event more than 10 years after the date  
18 on which the violation is committed,

19 whichever occurs last.

20 31 U.S.C. §3731.

21 Thus, the United States may bring a False Claims Act action  
22 either within six years from the date of the violation of the Act,  
23 or up to three years from the date the "official of the United  
24 States charged with responsibility to act in the circumstances" is  
25 made aware of the facts "material to the right of action,"  
26 whichever occurs last. No more than ten years, however, may elapse  
27 from the date of the violation to the date the action is commenced.







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1 in default and has failed to plead or otherwise defend as provided  
2 by said rules.

3 [R]ule 55(b)(2) prescribes the procedure to be  
4 followed when a judgment is sought against a  
5 litigant in default in situations that lie  
6 beyond the powers delegated to the clerk under  
7 Rule 55(b)(1). Thus, the rule provides that "if  
8 the party against whom judgement by default is  
9 sought has appeared in the action, the party  
10 (or, if appearing by representative, the  
11 party's representative) shall be served with  
12 written notice of the application for judgment  
13 at least 3 days prior to the hearing on such  
14 application. The court has discretion to decide  
15 whether to enter a judgment by default, however  
16 and Rule 55(b)(2) empowers the district judge to  
17 hold hearings or "order such references as it  
18 deems necessary and proper" to aid its exercise  
19 of this discretion. . . .

20 Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d  
21 §2684. (footnotes omitted) (emphasis supplied)

22 As of this date, more than 120 days have elapsed from the  
23 personal service of process, and defendants have failed to answer,  
24 plead or otherwise defend in this case.

25 Rule 55 does not require that testimony be  
26 presented as a prerequisite to entry of a  
27 default judgment, and thus several courts have  
28 determined that a hearing is not required  
29 before entering a default. However, when it  
30 seems advantageous, a court may conduct a  
31 hearing to determine whether to enter judgment  
32 by default. The hearing is not considered a  
33 trial, but is in the nature of an inquiry  
34 before the judge.

35 Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d  
36 §2688. (footnotes omitted) (emphasis supplied)

In this case, it is within the court's discretion to decide whether to enter judgment by default, hold a hearing, including a hearing "in the nature of an inquiry," or enter any order as it deems necessary and proper to its exercise of this discretion. This court holds that Rule 55 does not require that testimony be presented as a prerequisite to entry of default judgment. See United States v Cabrera-Diaz, 106 F. Supp. 2d 234, 243(2000).

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1 less the amounts repaid to the United States for the emergency  
2 loans (\$5,467,190.68) and for the operating loans (\$1,205,433.90),  
3 for a total net amount of \$24,621,965.42, plus mandatory civil  
4 penalties against co-defendants Alfonzo, Morales and the conjugal  
5 partnership constituted by both, jointly and severally, in the  
6 amount of \$10,000.00 for each one of the one-hundred eighteen false  
7 statements or false claims submitted by Alfonzo and Morales to the  
8 FSA in relation to the emergency and operating loans, for a total  
9 of \$1,180,000.00. Also, Judgment shall be entered against co-  
10 defendant Alfonzo alone, in addition to the amounts specified  
11 above, for treble (three times) the damages sustained by the United  
12 States on account of the false statements/claims submitted by him  
13 in relation to the Livestock Indemnity Program (LIP) in the amount  
14 of \$364,784.00, which totals an aggregate amount of \$1,094,352.00,  
15 less the amounts repaid to the United States on said LIP which  
16 total \$58,297.00, for a total net amount of \$1,036,055.00, plus  
17 additional mandatory civil penalties against co-defendants Alfonzo  
18 alone, in the amount of \$10,000.00 for each one of the eight false  
19 statements or false claims submitted by Alfonzo to the FSA on  
20 account of the Livestock Indemnity Program (LIP), for the total net  
21 amount of \$80,000.00, plus the investigation costs incurred by the  
22 plaintiff as the result of their false claims penalties. Judgment  
23 shall be entered accordingly.

24 **IT IS SO ORDERED.**

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1 San Juan, Puerto Rico, this 8<sup>th</sup> day of June, 2006.

2 S/José Antonio Fusté

3 JOSE ANTONIO FUSTE

4 Chief U.S. District Judge